HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 691/2001
(Old No. 745 of 1987)

Sh. Amarjeet Singh S/o Balwant Singh
Vs.
Sh. Naresh Kumar Coal-sale (p) Ltd. 2-A Race Course Dehradun. and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 24.09.2004

Initial of Judge

Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O.No. 691 of 2001

Sh. Amarjeet Singh
S/o Sh. Balwant Singh ...Appellant

Vs

Sh. Naresh Kumar
Coal-sale (p) Ltd.
2-A Race Course Dehradun.
and others. ....Respondents

Counsel for the petitioners Sh. C.D. Bahuguna
Standing Counsel for the petitioner.

Dated:- 24-9 2004

Hon'ble Rajesh Tandon J.

Heard Sh. C.D. Bahuguna learned counsel for the petitioner and Standing counsel for the respondents.

By the present writ petition the appellant has prayed for quashing the order dt. 17-10-1986.

Briefly stated that on 3-7-1984, the claimant while going on his way to Sales Tax Office on the scooter No. DHK 3947 via Subhash Road. At about 1.30 pm when he reached the crossing of Euclayptus Road and E.C. Road, Truck No. UGA 8268 driven by Sh. Ranjeet Singh came with a high speed from E. C. Road. He was being driving rashly and negligently, the truck in question swerved on its wrong side and knocked down the claimant, who sustained grievous injuries and his scooter was also badly damaged.

According to the case of the appellant he was admitted in the orthopaedic Nursing Home at Rajpur and he was treated there from 3-7-1984 to 12-7-1984 he was thereafter brought to

Doon Hospital, Dehradun, where the medical officer on duty examined his injuries.

According to the case of the appellant F.I.R was also lodged on the same day and the case of rash and negligent driving and causing serious injuries was registered.

According to the appellant he was selling coal at his coal shop due to the accident his business has suffered seriously and even the scooter was badly damaged.

The claim was contested. However, it was admitted that the accident had taken place by truck No. UGA 8268. The defense was that the claimant himself was responsible for the accident. The injuries were also admitted. The claims tribunal has framed the three issues:-

(1) Whether the accident has taken place due to rash and negligent driving of truck No.UGA 8268 by its driver Sh. Ranjeet Singh?

(2) Whether the accident occurred due to rash and negligent driving of the scooter by the petitioner himself?

(3) To what amount of compensation, the petitioner is entitled to claim and from which of the parties with what proportionate liability?

While deciding the issues No. 1 and 2 as to whether accident had taken place due to rash and negligent driving by its truck driver Sh. Ranjeet Singh and whether the accident occurred due to rash and negligence driving of the scooter, the claims Tribunal has relied upon the statement of PW1 Sh. Amarjeet Singh claimant

himself who has disclosed that he had crossed 3/4th portion on the cross Road of the Eucalyptus Road and E.C. Road, a truck driven by Sh. Ranjeet Singh came from his right hand side of the road and hit the scooter at rear side. It was further disclosed that he was on the side of the road while coming from Subhash Road side and going towards the Sales Tax Office. It was also disclosed that half of the scooter had gone its route from front edge of the truck. The rear half was then knocked down by the truck and thereafter the truck stopped at 20-25 paces on Eucalyptus Road.

Sh. Chanchal Singh was also examined by the claimant as P.W.2 who also testified that on 3-7-1984 at about 1.30 pm he was coming from M/S Bahi enterprises on Eucalyptus Road. When he saw a truck coming with a high and rash speed from E.C. Road side without blowing any horn, the truck dashed the scooter being driven by Sh. Amarjeet Singh on the crossroad.

Sh. Ranjeet Singh was also examined as DW3 by the defence. He has deposed that the scooter driver could not control its speed and struck his scooter coming from the left hand side at the first instance.

Smt. Indu Gupta was also examined. The tribunal has recorded the finding that the accident had taken place due to rash and negligent driving of the driver and the petitioner cannot be claimed.

(3) While deciding issue No.3, the petitioner has claimed a total sum of Rs. 1,63,209 as

compensation. The details of compensation under various heads as claimed by him are as follows:-

(1) Medical Expenses	*Rs. 8,000/-*
(2)Loss of immediate further earning	*Rs.25,000/-*
(3)Repairs of Scooter	*Rs. 3,209/-*
(4) Conveyance used in Connection with treatmen t	*Rs. 2000/-*
(5) Mental agony and physical Pain.	*Rs. 25,000/-*
(6) Special damages.	*Rs. 1,000000/-*

The inquiry report paper No. 21(ख) and 22-B of Dr. B.C. Ramola, Radiologist, Doon Hospital, Dehradun indicates as under:-

"Certified that Sh. Amarjeet Singh S/o Sh. Balwant Singh, whose signatureare attested below has been examined by me today in the O.P.D of Doon Hospital with X-ray of his old injured right leg. He had compound displaced facture of right leg.

At present the fracture sit was united with the permanent disability in the form of shrilling of right leg 3/4th. As a result of which he has difficulty in fast walking and running."

The statement of Dr. R.D. Verma Shows to the following effect:-

"मेरा नाम डा0 आर0 डी0 वर्मा मेरे पिता का नाम स्व0 श्री डी सी वर्मा''

Old Cannaught place, Dehradun.

<u>On oath</u>

1)''मै M.B.B.S o Diplomas in Orthopadic Surgery and Tropical medicines मैमैनें 1950 मैं M.B.B.S पास किया था 1952 मै मैने U.P. Prof. Medical service की थी । मैने कानपुर रामपुर इत्यादि में कार्य किया बतौर सरकारी डाक्टर के। मैने Govt. Hospital orthopadics surgeon के रूप मे भी काम किया। मैने England मै भी orthopedics surgeon का काम किया।

2) मैने वाद ग्रस्त मुकदमे की अमर जीत सिंह की X-ray plate देखी। मैने हाजिर अदालत अमर जीत सिंह प्रार्थी को 10.8.1986 को उसके घर पर Examine किया। अमर जीत सिंह को परीक्षण के दौरान मैने चलवाया
उसकी किसी भी टॉग मे lumping नही है। उसकी दोनो टांगो की लम्बाई बराबर है कोई टांग छोटी बडी नही है ना ही किसी टांग में permanent disability है, दोनेा की लम्बाई 94 सेंटीमीटर प्रत्येक है। कागज नम्बर मेरे द्वारा दाखिल रिपोर्ट है। इस पर मेरे दस्तखत है। इस पर ए–2 डाला गयझं

3) मेरा Diploma Part Graduation है। यह सही है कि Orthopadic में M.S या C.H.Post Graduate degree है मेरे पास अमरजीत सिंह का मुआयना करने के लिखित निदेष नही है। कि उसके check up मे क्या क्या दिखाना है। मुझे श्री कोहली ने यह बताया था कि अमर जीत सिंह का मुआयना करना है disability के बारे में मुझे कुछ नही बताया यह सही है कि कोहली को में सन 1983 से पहले से जानता हूॅ। वैसे

वह सन 1983 से मेरे वकील है। मै उनके junior पवन कुमार एडवोकेट को भी जानता हूॅ। श्री पवन कुमार अमर जीत के परीक्षा के समय मे साथ थे।''

4) मै General Physician के अलावा का काम भी करता हूॅ। मै Income Tax देता हूॅ। मैने नाप तोल कपउे के इंची टेप से किया था। मै। आजकन सरजरी कम करता हूॅ। old Age की वजह से। मै General Physician का काम करता हूॅ। मैने इस फाइल मे लगे सब X-Ray देखे थे। मुझे नही ख्याल कि किस किस स्थान के वह X-Ray है यह कहना गलत है कि में श्री कोहली के प्रभाव में आकर व जिस पार्टी ने मुझे बुलाया है की वजह से झूठी गवाही दे रहा हूॅ।

As will appear from the report of the Dr. Senior Medical Oficer Sh. S.P. Tiwari Doon Hospital Dehradun that there is a shortened of right leg by 3/4th, as a result of which he has difficulty in fast walking and running.

The claims Tribunal has also considered the medical bills filed by the claimant that as paper No. 38-B to 60-B amounting of RS. 4056.18 and a sum of Rs. 5000/- has been awarded towards medical expenditure. So far as the claim of Rs. 25,000/- towards loss of immediate further earning, the Claims Tribunal has come to the conclusion that the appellant has claimed earning of Rs. 8000/- to Rs. 10,000/- per annum. Besides this he was also working as a commission agent for his father. . The submission of returns for the years 1982-83, 1983-84, and 1984-1985 were also placed on the record in order to justify the earning of the appellant. Admittedly, the appellant has suffered the injuries and was confined to hospital and a sum of Rs. 1500/- only has been awarded by the Claims Tribunal.

Therefore, I find that there was no ground to reject the entire returns, in as much as the accident had occurred in the year 1984 where as the statement of returns were to the relevant year 1982-83. However, the Claims Tribunal has observed to the following effect:-

> *Neither the accounts nor any other documents have been brought on record by the petitioner to show that he worked as commission agent for his father and besides that he was running a coal depot earning Rs. 8000/- to Rs. 10,0000/- per annum. Moreover, admittedly the coal business was being looked after by his servant and, therefore, it cannot be accepted that he suffered loss of earning the rate as stated by him. However, there can be no denying of the fact that he would have been confined to his home for about two months or so and during that period he would have not attended his business. In his absence, the servant too would not have been careful and attentive, .So considering these facts and circumstances, I award a token sum of Rs. 1500/- to meet the loss of immediate future earning.*"

In view of the aforesaid, the amount awarded cannot be unjustified.

Regarding the sum of Rs. 3209/- toward the repair of the scooter, a sum of Rs. 2000/- has been awarded. The amount awarded cannot be interfered. So far as mental agony is concerned a sum of Rs. 25,000/- having been awarded, I find no infirmity while awarding the amount.

In my opinion the report of Doctor and the statement was sufficient to show that the appellant has suffered the damages on account of the injury.I therefore award a sum ofRs.10,000/- on that score.

Counsel for the appellant has also filed the supplementary affidavit regarding the irregularities during the examination of the Doctor.

Counsel for the appellant has referred the judgment of R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd and others 1995 ACJ 366. It has been held as under:-

> *"Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant (i) medical attendance (ii) loss of earning of profit up to the date of trial (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future (ii) damage to compensate for the loss of amenities of life which may include a variety of matter, i.e. on account of injury the claimant may not be able to walk, run or sit (iii) damages*

for the loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened (iv) inconvenience , hardship, discomfort, disappointment, frustration, and mental stress in life."

In Ebrahim fakir Ansari Vs. Sitaram Kamalaksha Kamat and another 1990 ACJ 465, it provides as under:-

"The learned Member found the driver of the vehicle to be negligent and accordingly liable to pay compensation to the applicant. However, as against the claim of the applicant for Rs. 1,00,000/-, the learned Member allowed the claim to the extent of Rs. 60,504/-. Being not satisfied with the amount of compensation, the applicant has come in appeal."

"The amount of compensation was computed by the learned Member under six heads though they actually would constitute five heads Rs. 20,000/- and Rs. 5,000/- were awarded in respect of pain and suffering and consequent loss of comfort on account of injuries sustained by the applicant; Rs 4000/- was the amount estimated to have been spent by the applicant over the period of two years on special diet.A sum of Rs. 28,304/- was determined as the amount of compensation for loss of earning as a result of the being on leave for a period of 8 months and 7 days, Rs. 200/- was the amount stated to have been spent by the applicant towards taxi fare and Rs. 3000/- was the amount awarded for another

operation which was likely to be performed on the applicant for taking out the plate inserted in his left leg."

In Union Carbide Corporation Vs. Union of India and others 1989 ACJ 1760, it has been held as under:-

"It is unnecessary for the present purpose to refer, in any detail, to the somewhat meandering course of the legal proceedings for the recovery of compensation initiated against the multinational company initially in the courts in the Unites States of America and later in the District Court at Bhopal in Suit No. 113 of 1986. It would suffice to refer to the order dt. April 4, 1988 of the High Court of Madhya Pradesh which, in modification of the interlocutory order dated December 17, 1987 made by the learned District Judge, granted an interim compensation of Rs.250/- crores. Both the Union of India and the Union Carbide Corporation appealed against that order".

"It appears to us that the reasons that persuaded this court to make the order for settlement should be set out, so that those who have sought a review might be able effectively to assist the court in satisfactorily dealing with the prayer for a review. The statement of the reason is not made with any sense of finality as to the infallibility of the decision; but with an open mind to be able to appreciate any tenable and compelling legal or factual infirmities that may be brought out calling for remedy in review under Article 137 of the Constitution."

In United India Insurance Co. Ltd and others Vs. Surjit Singh 1991 ACJ 399, it has been held as under:-

"Mr P.K. Seth has pressed only one point before me and that is that there was actually no medical evidence to prove the disability of the respondent and, therefore, the sum of Rs. 36,000/- awarded on this count was actually not called for. On carefully going thought he evidence recorded. I find that in this respect three witnesses were examined before the Tribunal PW 7 is Dr.Indera Bami, Junior Medical Officer, willingdon Hospital and PW 3 is Dr. Amarjeet Singh Ahluwalia . He is a private practitioner who claimed to have treated the respondent from 14-4-1971 to 23-8-1971. It has come in his statement that the respondent is unable to do heavy work and whenever he goes for work, he gets pain in the places where he had fracture and he ahs to be given continuous treatment. Learned counsel for the appellants has argued that he was only a Matriculate registered medical practitioner and, therefore, the Tribunal should not have been placed reliace on his statement. But this argument has no force. Besides this statement, there is evidence of PW 4 and PW 7 had brought four sheets and one X-ray about the examination of the respondent by Dr. S.C. Ahuja. The respondent was taken to Willington Hospital after the accident in Emergency department where he was examined by PW 7, Indera Bami, She found a number of injuries on the person of the respondent and advised X-ray of lumbosacrel spine. Then the respondent was X-

rayed and he was found to have fracture of left iliac sacrum, fracture lower end of radius left side, fracture transverse process of fourth lumbar vertebra and fracture of superior ramus of right public bone. He was discharged from the hospital on 14-4-1971. It is in the statement of PW3 that thereafter he was treated by him."

In view of the above, the claimant shall be entitled to receive a sum of Rs. 40,000/- along with the interest of 6% on the enhanced amount.

Consequently, the appeal is allowed. No order as to cots.

Dated: - 24-9-2004 **(*RAJESH TANDON***

M.K.

M.K.